WEB COPY NOT OFFICIAL

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 0316 of 2013

With

Criminal Appeal (S.J.) No. 1037 of 2010

Against the judgment of conviction, dated 03.09.2010, and order of sentenced dated 04.09.2010, passed by Mr. Chandra Shekhar Jha, Additional Sessions Judge, II, Banka in Sessions Trial No. 140 of 1994 arising out of G.R. Case No. 1060 of 1993

==========

Lakhan Yadav, son of late Mohan Yadav, resident of village Taharpur P.S. Dhoraiya, district Banka .... Appellant
(in both the appeals)

Versus

The State of Bihar .... Respondent
(in both the appeals)

==========

Appearance :
For the Appellant : M/S Pankaj Kumar Sinha & Kamal Kishore Jha, Advs.
(in both the appeals)
For the Respondent : Mr. S.A. Ahmad, APP
(in Criminal Appeal (S.J.) No. 0316 of 2013)
For the Respondent : Mr. S.N. Prasad, APP
(in Criminal Appeal (S.J.) No. 1037 of 2010)

==========

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT
Date: 03-12-2015

Heard the learned counsel for the appellant and the State.

2. Criminal Appeal (S.J.) No. 316 of 2013, Jail Appeal, and Criminal Appeal (S.J.) No. 1037 of 2010 preferred by the same appellant and since both the appeals arise out of same judgment and order passed in Sessions Trial No. 140 of 1994 arising out of Dhoraiya P.S. Case No. 81 of 1993, are heard together and are being disposed off by this common judgment.

3. The appellant has been convicted under Section 376 of the Penal Code and sentenced to undergo rigorous imprisonment for ten years with a fine of Rs.5,000/- and in default of payment of fine to undergo rigorous imprisonment for further period of six months.

4. The prosecution case, as alleged in the first information report by the informant China Devi, is that on 11.09.1993 at about 07.00 P.M. she went out of the house to attend the call of nature to south-

WEB COPY NOT OFFICIAL

western of her house in the field of Lakhan Yadav where crops were standing and as soon as she sat to attend the call of nature, then, Lakhan Yadav, who was sitting there from before, caught hold of her, tied her mouth, throw her on the ground and removed the clothes of the victim and raped her for five minutes. She has, further, stated that the semen fall on her saya. She did not make any hulla for the reason that she was threatened by the appellant to kill her. She came to her house. She did not disclose to any person of the village, but, when her husband came to house, then, she disclosed about the occurrence, her husband who took her to Police Station where her statement was recorded and she also produced the said saya. On the statement of the victim the first information report lodge, investigation proceeded and the police after investigation submitted the charge sheet, on which the cognizance taken and case committed to the Court of sessions. After the commitment the charge was framed for offence under Section 376 of the Penal Code and the trial proceeded.

5. During the trial, five witnesses were examined by the prosecution.

6. P.W. 1 is Dashrath Das, the husband of the victim, who supported the prosecution case that when he returned from Bhagalpur, his wife, China Devi, the informant, disclosed that Lakhan Yadav has raped her. He went to the Police Station on the next morning along with his wife and daroga recorded the statement of his wife, read over the contents and the wife gave her thumb impression and they also handed over the saya besmeared with semen of Lakhan Yadav to daroga, Sub Inspector of Police. Daroga seized the saya and prepared the seizure list. P.W. 1 is Krishnadeo Singh, a formal witness, who has formally proved the formal first information report, the signature of the then Officer-in-Charge. P.W. 2 is Mst. Karmi Devi, mother-in-law of the victim. She has disclosed that when China Devi returned after the occurrence, she

WEB COPY NOT OFFICIAL

disclosed about the occurrence. P.W. 3 is victim, China Devi, who supported the prosecution case regarding the offence in the field of the appellant and also supported the prosecution case regarding the semen having been fallen on her saya and she disclosed that she disclosed the fact to her mother-in-law and when her husband came on Sunday at about 04.00 P.M., then, she disclosed about the occurrence to him and then on the next day, on Monday, she came to the Police Station along with her husband and one co-villager, Rafique, where she disclosed about the occurrence to daroga, who recorded her statement, read over the content and finding it correct she gave her thumb impression. P.W. 4 is the doctor, who examined the victim. She found the sign of scratch on her upper chest, however, stated that no external or internal injury found inside or outside the vagina or valve, no sperm found inside the vagina and his report is marked as Exhibit 1. P.W. 5 is a formal witness, an Advocate Clerk, Nawal Kishore Yadav, who has formally proved the fardbeyan, which has been marked as Exhibit 2.

7. The trial Court taking into consideration evidence of the witnesses convicted the appellant and sentenced, as mentioned above.

8. The defence of the accused that no occurrence as alleged occurred and the accused person has falsely been implicated and the witnesses have deposed falsely in this case.

9. The learned counsel for the appellant has challenged the order of conviction and sentence recorded by the trial Court. It has been submitted that the investigating officer of the case has not been examined and this has caused prejudice to the accused. It has, further, been contended that the medical evidence does not provide that any sign of rape was found on the private part of the victim though it is alleged that the victim was raped by force. It has, further, been contended that the evidence of the victim suffers from contradictions that she could not speak out anything out of shame, but, at the same time she has stated that

WEB COPY NOT OFFICIAL

she gave four slaps to the accused and, further, though she stated that she did not speak out, but, she stated that she cursed the appellant. It has, further, been contended that the victim, in her statement, has stated that she had never visited the house of the appellant nor she was knowing or identifying the appellant, hence, it is not accepted that she named the appellant, hence, it is contended that the implication of the appellant is false and the evidence of the prosecutrix suffers from the contradictions and if her evidence is not worthy of confidence, then, the conviction can not be recorded on the sole testimony of the victim.

10. The learned counsel for the State, however, countered the argument and it is stated that the victim has well identified the appellant in Court and specifically stated that this is Lakhan Yadav, who has committed rape upon her. It has, further, been contended that to identify a person it is not required that they must have been in visiting term. It has, further, been contended that the occurrence took place in the field of Lakhan Yadav, which is stated in the fardbeyan, itself, on the south-western corner of the house of the victim and, further, both, the victim and the appellant, are residents of the same village having their houses at only 300 yards, hence, the probability of identify the appellant can well be inferred. It has, further, been stated that the contradiction pointed out are very natural and they do not go to the root of the prosecution case to disbelieve the prosecution story. It has, further, been contended that it has come in evidence that victim had gave birth to six children and a lady who have given birth to six children in the case of rape if no injury found on her private part is no ground to reject the offence as the probability of finding injury on the private part of lady, who is mother of six children is neither probable nor required. It has, further, been contended that nothing has been shown that why the appellant has falsely been implicated in this by the lady since there is no reason for false implication or to disbelieve the evidence of victim.

WEB COPY NOT OFFICIAL

11. Having regard to the respective submissions, I proceed to consider the submissions of the parties in the light of the evidence of the witnesses adduced in the case.

12. It is pertinent to mention that the occurrence took place on 11.09.1993 and the matter was not reported to the Police Station, the reason having been given in the first information report, itself that the husband was not in the house and when he came on the very next day of the occurrence, which is Sunday at about 04.00 P.M. and, then, the victim disclosed him about the occurrence. The distance between the house of the victim and the Police Station is 15 Kms. The husband took the victim to the Police Station on the very next day, i.e., on 13.09.1993, to record the first information report. The victim also produced the saya having the sign of semen and it has been specifically asserted that the semen is of Lakhan Yadav, which fell on saya at the time of commission of rape. A seizure list has been prepared, which has been marked as Exhibit 3 and has been proved. Five witnesses examined in this case, the investigating officer has not been examined. There is no eye witness to the occurrence, except the victim herself. P.W. 1 is the husband, P.W. 2 is the formal witnesses, P.W. 3 is the mother-in-law of the victim, P.W. 4 is the doctor, who examined the victim and P.W. 5 is a formal witness. P.W. 1, husband, has only stated that when he returned on Sunday evening the victim disclosed about the occurrence and then on the very next day he took the victim to Police Station where the fardbeyan recorded. However, this evidence in his evidence in cross-examination stated that he was never in visiting term of the house of Lakhan Yadav and the house of the victim is on the western corner of the house of the accused, on eastern corner, and in between their houses, there are houses of 300 persons. He has, further, stated in cross-examination that there is no infirmity along with the accused nor his wife is having any enmity with the appellant. He has, further, stated that the accused is his co-

WEB COPY NOT OFFICIAL

villager. P.W. 2 is formal witness and his evidence is also not very relevant. P.W. 3 is Most. Karmi Devi, the mother-in-law of the victim and she has supported the prosecution case that when the victim returned after the occurrence, she disclosed about the occurrence and there is nothing in cross-examination worth mentioning. P.W. 3 is the victim herself and has supported the prosecution case. However, in the cross-examination at one place in paragraph 5 she stated that she has not been having a sexual intercourse with any person than her husband. However, in paragraph 10 of her cross-examination, she has stated that except her husband, it is only the accused, Lakhan Yadav, who had raped her or had a sexual intercourse. However, yet emphasis has been given on statement of the learned counsel for the appellant in paragraph 5 and stated that the victim has given a second statement and so her statement to be rejected. However, going to the two statements I did not find any contradiction as the tenor of the cross-examination in paragraph 5 it is apparent that the question has been asked in a manner that whether the victim herself was instrument in having a sexual intercourse with the appellant she has stated that except her husband she has not got involved in having sexual intercourse whereas in paragraph 10 it has been stated that except her husband only Lakhan Yadav has committed rape upon her, hence, the two statements in paragraphs 5 and 10 can not be said to be contradictory to each other, but, it is only a complementary to each other. The victim has been cross-examined at length and she has stated that when Lakhan Yadav caught hold of her she got so ashamed that she could speak out. This statement has again been given in paragraph 5 of her cross-examination. She has, further, stated in paragraph 9 that when accused thrown her on ground, she could not able to make out a hulla, as no voice could come out from her mouth though she had tried to get rid of accused and she bite to the appellant. However, it is pertinent to mention and it is a common experience that each person can not behave

WEB COPY NOT OFFICIAL

in similar manner in same situation. A person may so weak that he will submit him or her to an untoward incident, another person may be bold enough to fight out even risking his life and a person may protest mildly and this depends upon person-to-person and there is uniform rule that each person will react in same manner and uniform behaviour can not be expected from every one that is each and every person can not behalf in a similar manner in given circumstance or in given situation. Having gone to the entire evidence, I find that the evidence of this witness in cross-examination is very natural. She is being a woman has specifically stated that even she tried, she could not speak out though she has stated that during the occurrence she cursed the appellant. From the nature of evidence, it is apparent that she was not brave enough to fight away. The, further, criticism of the evidence of the victim is that she has stated that she was not identifying knowing to the appellant. It is true that during the evidence she has stated that she was not identifying (jan-pahchan), but, the word jan-pahchan has different connotation. However, having regard to the fact that both are residents of same village, the victim was going to meet the call of nature in the field of this appellant and from the evidence of the victim, itself, it is apparent that she has stated that it was the field of the appellant, which is behind her house, which is south-western corner, hence, when the field of the appellant is in close proximity of the house the probability of the victim has been identifying is still there and, further, the victim has identified the appellant in Court with specific assertion that this is Lakhan Yadav, who has raped her, hence, the identification of the appellant can not doubted.

13. However, having regard to the fact that in the Indian society, particularly in rural area, allegation of rape has very serious consequence, itself. The victim of rape could have been lost her respect in society. She lost the love of her husband. She is being looked down in

WEB COPY NOT OFFICIAL

the society. She lost respect not only in the house, but, even outside the house and the stigma and the trauma she suffers and taking such situation it is really that a false implication is not made. However, when the evidence of the victim is found to be reliable and trustworthy, it is not proper to reject her evidence or to ask her for corroboration. However, it has well been held that asking the victim for corroboration is adding insult to injury. It is true that if the evidence of the victim suffers from infirmity and her evidence is not trustworthy of reliance, her evidence may be rejected outright without corroboration.

14. However, taking into consideration the evidence of the victim that just after occurrence she came to her house, reported the matter to her mother-in-law and, thereafter, when the husband came, she again reported the matter to her husband, so I do not find any infirmity to reject the evidence of the victim. It is true that the investigating officer of the case has not been examined. It has been pointed out that the investigation has not come and the saya has not been produced and the investigating officer has not come to prove the place of occurrence, the victim herself has stated about the place of occurrence and in the entire cross-examination no challenge has been made regarding the place of occurrence and the only defence taken that no occurrence, as alleged, and there is nothing prejudice that non-examination of the investigating officer.

15. Hence, having regard to the facts and circumstances of the case, I do not find any merit to interfere with the order of conviction, recorded by the trial Court.

16. The learned counsel for the appellant contended that the occurrence is of the year 1993 and the appellant is more than 70 years old on the date of the statement of under Section 313 of the Criminal Procedure Code, hence, contended that at present he is about 76 years old. It has, further, been contended that the appellant has remained in

jail for about 7 years, 3 month and 25 days, hence, lenient view may be taken.

17. Having regard to the facts and circumstances of the case, the ends of justice shall meet by sentencing the appellant for the period already undergone.

18. Both the appeals are **dismissed** with the modification in sentence.

19. Since, the appellant is in jail, he is directed to be released forthwith, if not wanted in any other case.

(Gopal Prasad, J)

SA-Kundan/-

U	√	T	√

WEB COPY NOT OFFICIAL